

fact sheet

employment standards act

HOMEWORKERS

What is the purpose of the Employment Standards Act, 2000 (ESA)?

The ESA sets out rights of employees and requirements that apply to employers in most Ontario workplaces.

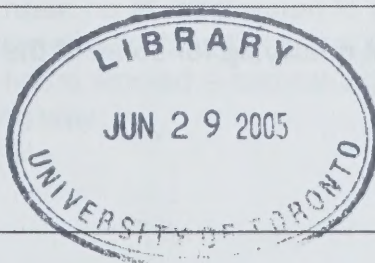
What work is not covered by the ESA?

Most employees and employers in Ontario are covered by the ESA. However, the ESA does **not** apply to certain individuals and persons or organizations for whom they may perform work, including:

- Employees in sectors that fall under federal jurisdiction, such as airlines, banks, the federal civil service, post offices, radio and television stations and inter-provincial railways
- Individuals performing work under a program approved by a college of applied arts and technology or university
- A secondary school student who performs work under a work experience program authorized by the school board that operates the school in which the student is enrolled
- People who do community participation under the Ontario Works Act, 1997
- Police officers (except for the Lie Detectors part of the ESA, which *does* apply)
- Inmates taking part in work or rehabilitation programs, or young offenders who perform work as part of a sentence or order of a court
- People who hold political, judicial, religious or elected trade union offices.

Employees of the Crown are excluded from some (but not all) provisions of the ESA.

For a complete listing of other work categories not governed by the ESA, please check the ESA and its regulations. Regulations set out exemptions to the law, special rules and details about how to apply certain sections of the ESA.



What are homeworkers?

Homeworkers are employees who do paid work out of their own homes for an employer (e.g., online research, preparing food for resale, sewing, telephone soliciting, manufacturing, word processing).

Independent contractors are *not* homeworkers under the ESA.

Are homeworkers the same as domestic workers?

No, homeworkers are not the same as domestic workers. Homeworkers do paid work out of their own homes for an employer. In contrast, domestic workers work in a private home directly for the person who owns or rents the home. They do things such as housekeeping and cooking, or provide care, supervision or personal assistance to children or people who are elderly, ill or disabled.

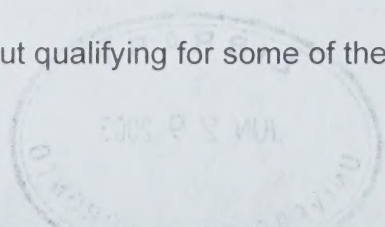
Here is an example of the difference between homeworkers and domestic workers: employees who prepare food at home for resale by their employer are homeworkers, but employees who prepare food in a private residence for the people living there to eat are domestic workers.

What rights do homeworkers have under the ESA?

Homeworkers are eligible for:

- emergency leave
- equal pay for equal work
- family medical leave
- hours of work protections (i.e., maximum hours of work, and daily and weekly/biweekly rest periods)
- minimum wage
- overtime pay
- pregnancy and parental leave
- public holidays
- regular payment of wages*
- severance pay
- termination notice and pay
- vacation with pay
- written job details.

(**Note:** There are rules about qualifying for some of the ESA protections listed above.)



* **Regular payment of wages means that:**

- wages are paid on a recurring pay period on a recurring pay day, and
- written wage statements are provided for each pay.

This fact sheet provides a brief overview of a homeworke's rights regarding minimum wage, overtime, hours of work and rest/eating periods, public holidays, vacations, written job details and records employers must retain.

What is the minimum wage rate for homeworkers?

Minimum wage is the lowest hourly wage an employer can pay employees.

There is a special minimum wage rate for homeworkers. A homeworke is entitled to a minimum wage that is 110% of the general minimum wage rate.

Both full-time and part-time homeworkers are entitled to this rate. Students of any age who are employed as homeworkers must also be paid the homeworkers' minimum wage.

The chart below sets out the homeworkers' minimum wage, general minimum wage and scheduled increases to both rates:

Minimum Wage Rate	January 1995	February 1, 2004	February 1, 2005	February 1, 2006	February 1, 2007
Homeworkers' Minimum Wage	\$7.54 per hour (110% of the general min. wage)	\$7.87 per hour (110% of the general min. wage)	\$8.20 per hour (110% of the general min. wage)	\$8.53 per hour (110% of the general min. wage)	\$8.80 per hour (110% of the general min. wage)
General Minimum Wage	\$6.85 per hour	\$7.15 per hour	\$7.45 per hour	\$7.75 per hour	\$8.00 per hour

If homeworkers are paid piece-work rate, how do they know whether they are receiving the equivalent of minimum wage?

The amount that a homeworke is paid must be at least equal to minimum wage. Homeworkers who are paid on a piece-work rate – a way of calculating pay that is based on the amount of work an employee completes, and not on the hours worked – can calculate whether they are being paid at least the minimum wage in the following way:

Take the total amount earned over the pay period and divide it by the number of hours worked in the same period for an average hourly rate. Compare that amount to the homeworkers' minimum wage rate in effect over that same pay period. (If overtime hours were worked, the calculation is more complicated.)

For example, a homeworker received \$195.00 as piece-work pay for the pay period May 1 to May 15, 2004 as payment for 25 hours of work in that pay period. The homeworker received the equivalent of \$7.80 an hour in that pay period but the homeworkers' minimum wage rate in effect from February 1, 2004 was \$7.87.

Based on the homeworkers' minimum wage, the employee should have earned at least \$196.75.

Result: The employer must therefore pay an additional \$1.75 to the employee (\$196.75 minus \$195.00).

Please see *What written job details must an employer give a homeworker?* below for information on the requirement that homeworkers' wage statements include the amount of the piece-work rate(s).

Do homeworkers get overtime pay?

Most employees, including homeworkers, must receive overtime pay for each hour worked in excess of 44 hours in a work week. (See the chart in the "How are You Covered by the ESA?" Fact Sheet for jobs with exceptions to the usual overtime rules.)

Overtime pay is at least 1½ times the employee's regular rate of pay. (This is often called "time and a half.") The "regular rate" of an employee who is paid a piece-work rate is calculated by dividing the wages earned in a work week by *non-overtime* hours worked in that week.

An employee and an employer can agree in writing that the employee will receive paid time off work instead of overtime pay. In this case, the employee must be given 1½ hours of paid time off work for each hour of overtime worked. The paid time off must be taken within three months of the work week in which it was earned or, if the employee agrees in writing, within 12 months of that work week. If an employee's job ends before he or she has taken the paid time off, the employee must receive overtime pay for the overtime hours worked no later than seven days after the date the employment ended, or on what would have been the employee's next pay day, whichever is later.

Overtime pay is calculated on a weekly basis. However, if there is a written averaging agreement between the employee and employer and an approval from the Director of Employment Standards, an employee's hours of work may be averaged over a period of two weeks or more for the purposes of calculating overtime pay. Note: If certain conditions are met, an employer may average hours for overtime purposes **before** an approval is received from the Director of Employment Standards. For further information see the "Hours of Work & Overtime" Fact Sheet.

What happens with agreements to average hours for overtime purposes that were in place before the law changed on March 1, 2005?

Prior to March 1, 2005, employees and employers could enter into averaging agreements for the purposes of determining overtime entitlements, but only agreements to average over periods of four weeks or longer required the approval of the Director of Employment Standards. Averaging agreements entered into under the law as it read before March 1, 2005 and that have not expired or been revoked continue to be valid agreements on and after March 1, 2005. However, as of that date, employers with overtime averaging agreements were required to obtain an averaging approval from the Director of Employment Standards. (Approvals given before March 1, 2005 for averaging agreements for four weeks or longer, were terminated as of February 28, 2005 and a “new” approval is required.)

Can homeworkers agree not to get overtime pay?

Subject to an agreement in writing between an employer and a homeworker to take time off in lieu of overtime pay, a homeworker and employer can't agree that the homeworker will give up the right to overtime pay. Overtime is an entitlement under the ESA, and this legal entitlement can't be given up.

In addition, employers can't reduce a homeworker's regular rate to avoid paying time and a half pay after 44 hours in a work week. For example, if Josée's regular rate is \$12.00 an hour, her employer can't drop her regular rate to \$8.00 an hour and then pay her 1.5 times \$8.00 an hour for overtime hours worked.

What are the maximum hours of work for homeworkers?

For most employees, including homeworkers, the maximum number of hours they can be required to work is:

- eight hours a day
- or**
- the number of hours in an employer's established regular work day that is more than eight hours
- and**
- 48 hours a week.

These hours of work maximums may be exceeded by written agreement between the employee and employer. However, an agreement to work more than 48 hours a week is not valid unless, prior to making the agreement, the employer gives the employee the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Ministry of Labour's Director of Employment Standards that describes the hours of work and overtime rules in the ESA. Generally, the employer must also obtain an approval from the Director of Employment Standards before employees may work more than 48 hours in a work week. However, if certain conditions are met, the employee may work those excess hours to a maximum of 60 hours per week **before** the approval from the Director is actually received. Generally, an agreement to work excess daily or

weekly hours can be cancelled with two weeks' written notice by the employee and reasonable notice by the employer. For further details see the "Hours of Work & Overtime" Fact Sheet.

What happens with agreements to work excess daily and weekly hours that were in place before the law changed on March 1, 2005?

Prior to March 1, 2005, employees and employers could agree to work excess daily and weekly hours up to 60 hours per week and with the approval of the Director of Employment Standards could agree to work more than 60 hours per week.

Daily excess hours agreements entered into before March 1, 2005 continue to be valid agreements but the employer is required to provide the employee (if he or she is not represented by a union) with the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards no later than June 1, 2005.

All excess weekly hours agreements that were entered into under the law as it applied before March 1, 2005 continue to be valid agreements subject to the requirement that the employer provide the employee (if he or she is not represented by a union) with the **Information Sheet About Hours of Work and Overtime Pay** prepared by the Director of Employment Standards no later than June 1, 2005. However, as of March 1, 2005 any Director's approval obtained for an agreement entered into prior to that date ceases to have any effect. As a result, an employer who has an agreement to work more than 60 hours per work week with an employee entered into prior to March 1, 2005 is required to obtain a "new" approval from the Director of Employment Standards.

What hours free from work are homeworkers entitled to?

Most employees, including homeworkers, are entitled to a certain number of hours free from having to work.

Daily

An employee must receive at least 11 consecutive hours off work each day.

This employment standard **cannot** be altered by a written agreement between the employer and employee. It applies even if:

- the employer and the employee have agreed in writing that the employee will work excess daily hours,

or

- the employer has established a regular work day that is longer than eight hours.

An employee must receive 11 consecutive hours off work each day, which means the work day may not exceed 13 hours (12 hours of work with two 30-minute meal breaks: see *What eating periods and breaks are homeworkers entitled to?* later in this Fact Sheet).

Between shifts

Employees must receive at least eight hours off work between shifts.

This rule doesn't apply if the total time worked on both shifts is not more than 13 hours. For example, a homeworker working a split shift or back-to-back shifts wouldn't need to receive eight hours off between shifts as long as the total time worked on the two shifts didn't exceed 13 hours.

An employer and employee **can** agree in writing that the homeworker will receive less than eight hours off work between shifts.

Weekly or Biweekly

Employees must receive at least:

- 24 consecutive hours off work in each work week, or
- 48 consecutive hours off work in every period of two consecutive work weeks.

This requirement **cannot** be altered by a written agreement between the employer and employee.

What eating periods and breaks are homeworkers entitled to?

An employee must not work for more than five consecutive hours without getting a 30-minute eating period (meal break) free from work. However, if the employer and employee agree, the meal break may be taken as two shorter breaks within a period of five hours. *Together* the two meal breaks must total at least 30 minutes. This agreement can be oral or in writing.

Meal breaks are *unpaid* unless the employee's employment contract requires payment. Even if the employer pays for meal breaks, the employee must be free from work.

Meal breaks, whether *paid* or *unpaid*, aren't considered hours of work, and aren't counted toward overtime.

Are homeworkers entitled to public holidays?

Most employees, including homeworkers (full-time and part-time) are entitled to take public holidays off work and be paid public holiday pay. It doesn't matter how recently the employees were hired or how many days they worked before the public holiday.

If the employee agrees in writing to work on the holiday, the employer must pay the employee wages at his or her regular rate for the hours worked on the public holiday and give the employee a substitute day off with public holiday pay. However, if the employer and employee agree in writing, the employee is entitled to public holiday pay for the day, along with premium pay of at least time and a half the employee's regular rate for each hour worked on the public holiday. To determine how much public holiday pay an employee would be entitled to, see the "Public Holiday" Fact Sheet.

Homeworkers qualify for public holiday entitlements unless they:

- fail to work all of their last regularly scheduled shift before or first regularly scheduled shift after the public holiday without reasonable cause*.

or

- fail, without reasonable cause, to work their entire shift on the public holiday if they agreed to work that day.

(Note: Most employees who don't meet either of these qualifying criteria are entitled to be paid premium pay (time and a half) for every hour they work on the holiday.)

* Employees are generally considered to have "reasonable cause" for missing work when something beyond their control—such as illness, for example—prevents them from working.

For more information, see the "Public Holidays" Fact Sheet.

Do homeworkers get vacations?

Most employees, including homeworkers, are eligible for a minimum of two weeks of vacation with pay after each 12 months of employment, starting from the date they are hired.

If the employer establishes a 12-month vacation entitlement year that does not start on the anniversary date of the employee's hire, the employee is also entitled to a pro-rated amount of vacation with pay for the period (stub period) before the 12-month vacation entitlement year begins.

Vacation pay is calculated as at least four per cent of the employee's "gross" wages (excluding vacation pay and before any deductions) earned in the period for which the vacation is being given.

Employees who do not complete either the stub period or 12-month vacation entitlement year don't qualify for vacation time. However, employees earn vacation pay as they earn wages, so they will be entitled to at least four per cent of the wages they have earned as vacation pay.

Vacation pay is due before an employee takes his or her vacation, except when:

- the employer pays an employee's wages by direct deposit, in which case it is due on or before the pay day for the period in which the vacation falls,
- vacation time is not taken in complete weeks, in which case it is due on or before the pay day for the period in which the vacation falls,
- the employee has agreed in writing to receive vacation pay on his or her paycheque as it is earned, in which case the vacation pay earned in each pay period is due on the pay day for that pay period, or
- the employee has agreed in writing to receive vacation pay at any other time.

For further details, including information about when and how vacation may be taken, see the "Vacation" Fact Sheet.

What written job details must an employer give a homeworker?

Certain requirements apply only to homeworkers. Employers must advise homeworkers *in writing* of:

- the type of work they are being employed to perform,
- the amount to be paid for an hour of work in a regular work week if the homeworker is to be paid by the number of hours worked,
- where the homeworker is to be paid by the number of articles or things manufactured*:
 - the amount to be paid for each article or thing manufactured in a regular work week, and
 - the number of articles or things to be completed by a certain date or time if the employer requires a certain number to be completed by a certain date or time,
- an explanation of how pay will be determined when the homeworker is being paid on some other basis.

* “Manufacture” includes preparation, improvement, repair, alteration, assembly or completion.

Employers must keep detailed records of hours worked, wages and deductions. They must give all employees a written wage statement with each pay that shows the full details of the pay period.

The written wage statement must set out:

- the pay period for which the wages are being paid
- the wage rate, if there is one
- the gross amount of wages and, unless the employee is given the information in some other manner, such as in an employment contract, how the gross wages were calculated
- the amount and purpose of each deduction from the wages
- the net amount of wages.

Please see *What kind of information must employers keep?*, below, for details about vacation time and vacation pay information and about the employee's right to this information.

What kind of information must employers keep?

Employers who employ homeworkers are required to keep a register containing the name, address and wage rate(s) of the homeworker. This must be kept for three years after the homeworker has stopped working for the employer.

In addition, all employers in Ontario, including anyone who employs homeworkers, must keep written records about each person they hire.

Employee records can be retained either by employers or by someone else on their behalf, but must be readily available for inspection. The period of retention varies depending on the information. For example, the employee's name, address and starting date must be retained for three years after the employee ceases to be employed by that employer. The number of hours the employee worked in each day and each week must be retained for three years after the day or week in question.

Each employee's written record must contain:

- the employee's name, address and starting date of employment
- the date of birth if the employee is a student under 18 years of age
- hours worked by the employee each day and week (see *Exception to the rule: hours of work records* later in this Fact Sheet)

Note: It is suggested that employees also keep a record of the hours they work and number of items they complete each day.

- information contained in the employee's wage statements
- all documents relating to pregnancy, parental or emergency leave
- the vacation time earned since the date of hire but not taken before the start of the vacation entitlement year
- the vacation time earned during the vacation entitlement year (or stub period, if the employer establishes an alternative vacation entitlement year)
- the vacation time taken (if any) during the vacation entitlement year (or stub period)
- the balance of vacation time remaining at the end of the vacation entitlement year (or stub period)
- the vacation pay paid during the vacation entitlement year (or stub period) and how that vacation pay was calculated.

Note: An employee is entitled to information about his or her vacation time and pay entitlement once with respect to each completed vacation entitlement year or stub period, on written request to the employer. See the "Vacation" Fact Sheet for more details.

Exception to the rule: hours of work records

If an employee receives a fixed salary for each pay period, and the salary doesn't change unless the employee works overtime, the employer is only required to record:

- the employee's hours *in excess* of those hours in the employee's regular work week, and
- the number of hours in excess of eight per day—or in excess of the hours in the employee's regular work day, if that's more than eight hours.

What if the employer does not follow the ESA?

If an employee thinks the employer is not complying with the ESA, he or she can call or visit the nearest Ministry of Labour office to discuss a particular situation or to file a complaint. Complaints are investigated by an employment standards officer who can, if necessary, make orders against an employer—including an order to comply with the ESA. The ministry has a number of options to enforce the ESA, including requesting voluntary compliance, issuing an order to pay wages, an order to comply, an order to compensate, an order to reinstate and/or a notice of contravention, or issuing a ticket or otherwise prosecuting the employer under the Provincial Offences Act.

This Fact Sheet provides general information about homeworkers as set out in the Employment Standards Act, 2000 (ESA) and its regulations. For complete information, please refer to the ESA and the regulations.

Need More Information?

If you have questions about the Employment Standards Act, call the Ontario Ministry of Labour's Employment Standards Information Centre at 416-326-7160 or 1-800-531-5551, or visit a Ministry of Labour office or Government Information Centre in person.

Here's how you can get written publications about the Employment Standards Act:

- Ministry of Labour website: www.gov.on.ca/lab
- Ministry of Labour Publications Sales unit: 1-800-809-4731

ESA Fact Sheets are available on the following subjects:

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| <input type="checkbox"/> Agricultural Workers | <input type="checkbox"/> Minimum Wage |
| <input type="checkbox"/> Domestic Workers | <input type="checkbox"/> Pregnancy Leave & Parental Leave |
| <input type="checkbox"/> Emergency Leave | <input type="checkbox"/> Public Holidays |
| <input type="checkbox"/> Family Medical Leave | <input type="checkbox"/> Retail Workers |
| <input type="checkbox"/> Frequently Asked Questions | <input type="checkbox"/> Role of the Ministry of Labour |
| <input type="checkbox"/> Homeworkers | <input type="checkbox"/> Termination of Employment & Severance Pay |
| <input type="checkbox"/> Hours of Work & Overtime | <input type="checkbox"/> Vacation |
| <input type="checkbox"/> How Are You Covered by the ESA? | <input type="checkbox"/> What Young Workers Should Know |
| <input type="checkbox"/> How to File a Claim | |

This Fact Sheet is provided for your information and convenience only. It is not a legal document. For further information and the exact wording in the ESA, please refer to the Employment Standards Act, 2000 (ESA) and regulations.

Please call the Employment Standards Information Centre in the greater Toronto area at 416-326-7160, or toll-free outside Toronto at 1-800-531-5551.

Information on the ESA can also be found at the Employment Standards Act section of the Ministry of Labour's website: www.gov.on.ca/lab. You can order copies of the ESA and related information materials from:

- the Ministry of Labour's Publication Sales Unit at 1-800-809-4731;
- the Ontario government E-Laws website at www.e-laws.gov.on.ca or,
- Publications Ontario, 1-800-668-9938; hearing impaired TTY 1-800-268-7095.

